

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
April 23, 2013

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, April 23, 2013, was called to order with the determination of a quorum at 7:01 p.m. by Chairman Dean Larson in the Activities Room of the George L. Gordon Jr. Government Center.

Members Present: Mr. Danny Kim, Mr. Ray Davis, Mr. Gregory Poss, Mr. Robert Grimes, Mr. Larry Ingalls, Dr. Ernest Ackerman, Mr. Dean Larson

Members Absent: Steven Apicella and Heather Stefl

Staff Present: Mr. Jeff Harvey
Ms. Evelyn Keith
Mrs. Stacie Stinnette
Ms. Denise Knighting

A. Call to Order by Chairman

Dr. Larson: Good evening ladies and gentlemen and welcome to this meeting of the Stafford County Board of Zoning Appeals. The BZA is a quasi-judicial body that is appointed by the Circuit Court of Stafford County. Purpose of the BZA is to hear and decide appeals from any order, requirement or decision or determination made by the Zoning Administrator. Hear and decide upon request for variance from the Zoning Ordinance when a literal enforcement of the Ordinance would result in unnecessary hardship to the owners of a property. Hear and decide on requests for special exceptions where the Zoning Ordinance allows for special exceptions. The Board consists of seven members and two alternate members and tonight all seven regular members are seated, so what I'll do is read their names and if you would just raise your hand when I do that. Mr. Danny Kim, Vice-Chair, Mr. Ray Davis, Mr. Gregory Poss, Mr. Robert Grimes, Secretary, Mr. Larry Ingalls, Dr. Ernest Ackerman and myself, Dean Larson, Chair. In addition we have two alternate members of the Board and they are not present tonight. The County Staff tonight will be represented by Mr. Jeff Harvey, Ms. Stacie Stinnette and Ms. Evelyn Keith. The hearings will be conducted in the following order: The Chair will ask the Staff to read the case and members of the Board may ask questions of the Staff. The Chair shall then ask the applicant or the representative to come forward and state their name and address and present their case to the Board. The presentation shall not exceed ten minutes, unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Chair will then ask for any member of the public who wishes to speak in support of the application to come forward and speak. There shall be a three minute time limit for each individual speaker and a five minute time limit for a speaker who represents a group. After hearing from those in favor of the application the Chair will ask for any member of the public who wishes to speak an opposition to the application to come forward and speak. After all public comments have been received the applicant shall have three minutes to respond. We ask that each speaker present their views directly to the Board and not to the applicant or other members of the public. After the applicant's final response the Chair shall close the public hearing. After the hearing has been closed there shall be no further public comments. The Board shall review the evidence presented and the Chair shall seek a motion. After the motion the Chair shall call for a vote. In order for any motion to be approved four members of the Board must vote for approval. The applicant, well we have seven members tonight, it doesn't get any better than that, however, you may, if you wish, defer or withdraw a hearing only once in a twelve month period, if you choose to do that. In fact you may withdraw your application at any time prior to a vote to approve or deny the application provided that you have not withdrawn a substantially the same application in the previous twelve months. Any person or

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persons who do not agree with the decision of this Board shall have thirty days to petition the Stafford County Circuit Court to review our decision. Also be aware that the Board will not hear any denied application for variance or special exception that is substantially the same request for at least one year from the date of our decision. Now I ask that anyone who has a cell phone or pager or any other electronic device that makes a sound when it rings, please turn it off. Please don't turn it to vibrate, because it interferes with some of the other equipment. Thank you. It is the custom of this Board to require any person who wishes to speak before the Board that they shall be administered an oath. Therefore I ask anyone who wishes to speak tonight, to stand, raise your right hand. Do you swear or affirm that all testimony in before the Board tonight shall be nothing but the truth?

Mr. Leming: I do.

Mr. Alan Cychan: I do.

Ms. Kerrie Cychan: I do.

Dr. Larson: The Chair asks that when you come down to the podium, or over to the podium, to speak, please give your name and address clearly into the microphone. Do we have a microphone? This is the microphone?

Mr. Kim: It's the recorder.

Dr. Larson: Oh, clearly into the recording device, so that our recording secretary can have an accurate record of the speakers. Also please sign the form at the table near the rear of the room. I assume we have one of those.

Ms. Keith: It is right outside.

Dr. Larson: Okay. Thank you. Are there any changes or additions to the advertised agenda?

Ms. Keith: No, there isn't. Oh, Mr. Chair, I'm sorry. Any questions that you may have or anyone may have, if you could direct it to Director of Planning and Zoning, Jeff Harvey.

Dr. Larson: Okay, very well. Before we hear the first case and proceed with the agenda, does any Board member wish to make any declaration or statement concerning any cases to be heard by the Board tonight?

B. Awards

Presented after Declarations and Disqualifications.

C. Declarations and Disqualifications

Mr. Ingalls: Mr. Chairman, the former Company that I retired from three years ago shared clients with Mr. Leming, so I don't have any contact, business contact, with the people at Sullivan, Donahoe & Ingalls any longer. I haven't discussed this case with anybody at Sullivan, Donahoe & Ingalls. I have not discussed it with Mr. Leming. Also I have visited the site today and I did speak with Mrs. Cychan. I feel like I will be able to fair and justly be able to render a decision.

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Dr. Larson: Very well. Any other declarations by the Board?

B. *Awards*

Dr. Larson: Okay, before we proceed I would like to go back to the second item on the agenda. It's a little unusual, but none the less important. Mr. Gibbons, would you step forward please? Mr. Robert Gibbons was the Chairman for, well, almost four years. I guess when you first started you weren't quite Chairman, but Bob's given a lot of service to the County and various hats. I think you were on the Board of Supervisors, I'm not sure if you were Chairman or not.

Mr. Gibbons: Yes sir.

Dr. Larson: You were. You are on the Planning Commission now. That's where you moved from this Board. Nobody here gets any money for what they do so it's all voluntary, so Bob, thank you very much for your services.

Mr. Gibbons: Thank you, Mr. Chairman.

Dr. Larson: Probably should have read this. Presented to Robert C. Gibbons in recognition of his dedication to the citizens of Stafford County, Stafford County Board of Zoning Appeals, January 2008 to December 2012. Thanks again.

Mr. Gibbons: Thank you, Mr. Chairman.

PUBLIC HEARINGS

1. **A13-02/1300139 - Leming & Healy, P.C. for Alan & Kerrie Cysan** - Per Stafford County Code, Section 28-349, "Appeals to board generally", the applicant is appealing a failed zoning review for building permit application number 1204698. The review failed due to the proposed structure not complying with minimum required setbacks as stated in the Zoning Ordinance. The property is located at 312 Ingleside Drive, lot 6 Ingleside Subdivision.

Dr. Larson: Now I will ask the Secretary to read the first case.

Ms. Keith: Yes, and I'll ask if everybody to speak up since we have limited recording systems here. Case A13-02/1300139, Leming and Healy, PC for Allen and Kerrie Cysan. Per Stafford County Code, Section 28-349, Appeals to Board generally, the applicant is appealing a failed zoning review for building permit application number 1204698. The review failed due to the proposed structure not complying with minimum required setbacks as stated in the Zoning Ordinance. The property is located at 312 Ingleside Drive, Lot 6, Ingleside Subdivision. Included in the package is the application, the owner consent form, a denial letter dated 2/11/13, a house location survey dated 7/7/2008, copy of the 1964 and 1966 Code, current Code and aerial photos. The applicant is appealing a failed zoning review for building permit application number 1204698. The review failed due to the proposed structure not complying with minimum required setbacks as stated in the Zoning Ordinance. Justification, The garage damaged by a storm is a lawful nonconforming use. The repairing of the garage does not increase the nonconformity. Section 28-273, Stafford County Zoning Ordinance, current. Section 28-273(b) "Nonconforming Structures" states, the owner of any building or structure, except for general advertising signs which are subject to Code of Virginia, § 33.1-370.2, as amended, damaged or destroyed by a natural disaster or

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other act of God may repair, rebuild, or replace such building or structure to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance from the BZA. If such building or structure is damaged greater than fifty percent and cannot be repaired, rebuilt or replaced to eliminate or reduce the nonconforming features, the owner may restore it to its original nonconforming condition as long as the building or structure is not repaired, rebuilt, or replaced in a manner which increases its nonconforming characteristic. Section 28-272 Definition states, where a lawful structure exists at the effective date of the adoption or amendment of this article that could not be built under the current regulations for the district in which it is located, such structure is nonconformity. After extensive research, staff has not been able to confirm a building permit was issued to construct the detached garage nor has the owner been able to provide documentation of an approved permit for the nonconforming detached garage. Staff could not validate the status of the garage as a legal nonconforming structure, and the permit to replace the detached garage with a setback that did not conform to the current regulations could not be approved. Number two, the predecessor accessory building on the footprint of the damaged garage was governed by and complies with the 1964 Zoning Ordinance and meets the setback requirements in effect at the time it was originally constructed. Section 3-1-6, Stafford County Zoning Ordinance, 1964. Section 3-1-6 1964 of the Stafford County Zoning Ordinance states, no accessory building may be closer than one foot to any property line. The Section 3-1-6 of the Zoning Ordinance was amended in 1966 to state no accessory building may be closer than ten feet to any property line. According to the aerial photos provided and included in the case, no structures were visible on the 1969 photo. Therefore, the regulation of the 1964 Zoning Ordinance does not apply. Number three, Stafford County authorized the reconstruction of the original building on the property in 1997. The property was reassessed by the Commissioner of the Revenue and the owners have been paying additional taxes on the structure for more than 15 years. As stated previously, after extensive research, staff has been unable to validate the reconstruction of the original garage in 1997. The appellant did not provide proof in this appeal application of said permit. A permit was approved in 2006 to add a door to an existing nonconforming garage. Our zoning review stated, applicant revised plans to remove 12 feet from another corner to not increase a nonconforming structure. Four, the applicant reserves the right to add additional grounds of appeal. The approved By-laws state, interested parties may submit relevant material to the Department of Planning and Zoning ten days prior to the meeting to be included in the staff report. The materials presented are relevant for the initial appeal. Additional grounds for appeal will need to be addressed in a different application.

Dr. Larson: Are there any questions of the staff?

Mr. Kim: Actually I have one question. Why can't... I don't understand, why we didn't find the permits that we issued. I mean, did we not issue permits? Is that why we can't find them, or was there never one submitted, is why can't find them, or...

Mr. Harvey: Mr. Kim, we don't know the answer to that question. We searched all the County records we have available to us and we are not able to find it. Based on the surveys we know that the original structure was there before 1998 and couldn't find any reference to that original structure.

Mr. Kim: Is this kind of the norm where, like, you know, that we couldn't find... like we misplaced or, I mean... I guess what I'm getting at is I'm, you know, I mean I'm sure they applied for a permit, but I just... you know, it would be nice to figure out...

Ms. Keith: If I may speak.

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Mr. Kim: Yes please.

Ms. Keith: The current system that we use, Hansen. It was not implemented until October of 1997. So previous records was on a previous system that we have no access to. So that is one of the reasons why we are unable to obtain the information.

Mr. Kim: Thank you.

Dr. Larson: So, okay, so, I have a question now. So the previous system... the system that we have in place now has changed in 97.

Ms. Keith: October of 97. Since then we started scanning the applications and every permit that was submitted we have access to, as of 1997.

Dr. Larson: What happened to the old permits?

Ms. Keith: I don't know. I think it went away. The IT department can further, you know, inform you of that, but I believe it went away, that whole system. And at that time the documents may have been in there, I mean the application permit, but not so much the scanned document. The scanning started in, from my understanding, in 1997 or later.

Mr. Kim: So just good timing?

Dr. Ackerman: So we have no records before 1997? I mean, is there nothing that we have?

Ms. Keith: Nothing that...

Dr. Ackerman: I mean there's nothing...

Ms. Keith: That's why we tried to reach out to see if the applicant has them. The only thing that we would rely on is the Commissioner of Revenue records when they did the assessment on the property.

Dr. Larson: When was that?

Ms. Keith: We're speculating, I guess, to say in 1997 there was an assessment made on the property for this detached garage. Anything prior to that we have no records that we can locate.

Mr. Harvey: And also, in 1997 we had a setback larger than one foot. So if there was issued a permit, it was not built in the correct location then.

Dr. Larson: Okay, this is a different issue, I think, we can address offline. Okay, I'd like to open the public hearing for this case. Would the applicant or his or her representative please come forward to present their case?

Mr. Leming: Good evening. My name is Clark Leming. I'm an attorney. My address is 233 Garrisonville Road and I'm here on behalf of the applicants who are seated to my left here, Karrie and Alan Cychan. It occurred to me you might want to hear evidence on both these cases, because one is an appeal and one is a variance regarding the same issue and they both are really different means to the same end. The end is

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permitting them to replace a garage that was destroyed by a storm last summer. I think there is a picture in your variance package that shows what happened. There was a large, I think, oak tree to the side of the garage that was totally uprooted and smashed the garage during the storm. So the Cycan's came to me a few days before the appeal period expired and we filed the appeal and then have since that point in time also filed an application for a variance. So, two ways to present them to rebuild their garage. If you would like me to proceed just on the issue of the appeal which of course is the only thing that has been announced so that's all I can proceed on right now. I think some of you already hit on what the real issue here is and that is a lack of records and a lack of information. I don't think any of us know exactly when the garage was constructed originally and whether it was part of the original house and the fact that we have not been able to determine exactly when the house was constructed either. The tax records go back to 1972 and I have a copy of the tax records, but that's as far back as they go and I don't have anything prior to 1972. There is some inferences that can be made here, but the real issue that all this... the appeal turns on, I think and I'm not sure exactly how to decide this issue without better facts, the real issue it turns on is whether we have a legal nonconforming use or an illegal nonconforming use. If it's a legal nonconforming use, I think it was clear from that presentation that they had the ability to rebuild the garage under these circumstances. If it's an illegal nonconforming use then they don't have that ability to do that. So how do we determine whether it's legal or not. Those were some of the questions that you all already addressed to the staff here. When was the garage built, what was the setback at the time the garage was built? When we initially looked at the case it was very clear to us that the house was built at least before 1978. In Stafford Zoning History we have a 64 Ordinance, we have a 78 Ordinance and then more modern iterations of the Ordinance of the Ordinance. I think, Jeff would correct me if I'm wrong. I think the next big one is in 95. When I first started practicing here the 78 Ordinance was in effect and it was about that thick. Then we had the 95 Ordinance and it was that thick. And there's the 64 Ordinance which is even thinner than the 78 Ordinance. So it was clear that, at least as far as the major Zoning Ordinances, that this one was governed by the 1964 Ordinance. I looked in the 1964 Ordinance and there under accessory structures very clearly had been implicated by the staff, it says, well the setback is one foot for an accessory structure. That's exactly what we have. That would explain a lot, as far as why they would build it in that exact location, one foot from the property line. Now staff has come up with some minutes, I believe it was 68, but 68 or 66 indicating that the Board of Supervisors amended the Ordinance to ten feet. So then the issue becomes, well was the house built before or after the ordinance and we don't know the answer to that question. We have an aerial that suggests that there is nothing that is on the ground. I don't know how old the aerial is or what the foliage situation was at that time but there is that evidence. Now, even if we assume that the garage was built sometime after 1966, say when the Ordinance was amended. I think there are still other relevant issues for your consideration with regards to the appeal and I am not sure any of that has been established, because we have some very circumstantial evidence here. But let's assume that all that all that is established, what we have since that point in time, we know the staff has made reference to, is at least one building permit that was issued for the garage under a previous owner whose name is Michael Deegan. And we did locate him. The garage was, they say, collapsed in some respect. There was a door that was added. All this was done on the eastern side of the garage, but Mr. Deegan has indicated something somewhat to the contrary and I'll share that with you in just a moment. In 2006, I don't think this is part of your package, but we do at least have the record of the permit, the building permit, that was issued at that point and I made copies of that for you. That's the 2006 one and if you all don't mind, each one is clipped, pass it down. And it's no question on the base of the permit that this was for some kind of work on the garage. May I call your attention to the second page? These were the residential charges. The very last charge, there is a category called the Zoning and there is a \$55 charge that is shown for Zoning. This is the Zoning review and this is what happened this time around. When the Cycan's came and applied for a permit they went through a Zoning review and that's how that issue came up. Well the same thing happened back in 2006. They went through a Zoning

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review, the permit was issued, but there was some discussion about decreasing the nonconformity. However if this is an illegal use in the first place, that is if it is a unlawful nonconforming use, no permit could have been issued, regardless of what the status of the building was. If it's an unlawful use there is no right to issue any permit. So at that point in time the Zoning Department decided that, apparently, that it was a lawful conforming use, because otherwise the permit couldn't have been issued. The permit was issued, the work was done and the garage was improved... enhanced to whatever extent that it was. That was not actually clear from this. As I indicated, I did catch up with Mr. Deegan and Mr. Deegan prepared an affidavit about the work that was done. Mr. Deegan purchased the property back in 1992, so he was the owner for a fairly substantial period of time and on the tax records there was some indication, I can't remember who, I think one member of the staff talked about this, the tax records indicate that there was a reassessment in 1997. The tax records say that was for a pool house. But Mr.... not the garage, but Mr. Deegan indicates in his affidavit that there were two cases when he approved the garage. Once in 1996, which I think is just ahead of the cut off, the record cutoff date for the permits when, if you look at the second paragraph of his affidavit, when he increased the height and size of the garage and obviously, again if this was an unlawful nonconforming use that could not have been done. I mean I'm not sure it could be done if it were lawful nonconforming use, but that's what Mr. Deegan indicates was done in 1996 and then a second improvement in 2006 which is the one that we do have the record on. He did this work on the western side of the garage, he indicates on both occasions contractors applies for and obtained building permits from the County for the construction and upon completion of the work the County inspected and approved the work. The footprint of the garage has not been altered on the eastern side. That would be the side where the one foot setback was, they had to fix that up before, but was expanded on the western side, which would be the side away from the property line and that's Mr. Deegan's signature that appears there. Now, this may add more confusion than clarification to the whole thing, but what this means is, that we know for sure, based on the records that we do have, that in 2006 there was an improvement to the garage, a permit that was issued, a Zoning review that was conducted and a determination that, apparently a determination, that this was a lawful nonconforming use. According to Mr. Deegan the same thing happened in 1996. He doesn't have those records. Obviously the Cygan's don't have them, the County doesn't have those records, but in 1996 there was also an improvement to the garage. According to Mr. Deegan a fairly significant improvement to the garage, probably to pretty much what it was before the tree fell on it. So if that is the case, there is a section that some of you are familiar with of Virginia Code and some of you that have been on the BZA a while will recall my talking about this in the past. This is Virginia Code section 15-2-2-3-1-1 and section C of that indicates that when a zoning decision or determination has been made, any type of zoning decision or determination, that once that decision has been made and it has remained in place for a period exceeding 60 days that it cannot be changed, altered or modified. Virginia law is very clear on that. So it is my contention, even if you believe that the evidence of the staff is sufficient to conclude that we don't know when the house was built or what was the appropriate setback way back when. But even if you accept that what we have are one and probably two zoning determinations since that point in time that this was a lawful, nonconforming use. And on that basis the County is stopped... precluded from now changing its position and taking the position that this is an unlawful, nonconforming use and therefore cannot be rebuilt. So that is our position with regard to the appeal. I would add one other thing that Mr. Deegan supplies. When he purchased the house in 92 his affidavit indicates that the siding used on the garage matches the siding on the house and that he assumed that the garage was built at the same time the house was built. We didn't know that at the time the application was filed. We assumed maybe Mr. Deegan had actually built the garage, but this was Mr. Deegan's position that the garage was actually there with the same siding as the house in 1992 when he purchased it. As I also indicated, I think there's a fairly significant equity issue here. The tax records indicate that all along the owners of the house, whether it's the Deegan's or their predecessor or the Cygan's, have been paying taxes on these improvements. So

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they've been taxed as if these were lawful improvements of the garage and the house as well. So I think on those grounds that the Board of Zoning Appeals has room to make the determination that this zoning decision was an error if for no other reason, because it is inconsistent with the two prior zoning decisions that would have had to have been made in 2006. The zoning review on the documentation that you have, and the one that was made apparently in 1996 according to Mr. Deegan. So on these grounds we ask that you overturn the appeal and give the Cygan's the ability to rebuild the garage as they may, according to the County's Ordinance. Now as far as... I will be happy to answer any questions that you have we do also have a presentation on the variance and...

Dr. Larson: Let's wait.

Mr. Leming: Okay.

Dr. Larson: If you could just assume that we have already heard what we've heard, so when you present for the variance you don't have to recover any of the stuff we just heard, but let's wait on the variance presentation.

Mr. Leming: I wasn't going to get into any detail. I was just going to say you may want to decide, you may want to hear both of these cases and then decide what the best way to handle it is. That would simply be a suggestion.

Dr. Larson: Are there any questions for Mr. Leming?

Mr. Ingalls: Let me give you my story on this. What I think has happened and one of y'all's lawyer's statement is, you don't know what you don't know, and I don't know. Just from looking at the information presented and some of the things you said, I think we all... I think we all should agree there was no house there in 1969. The aerial photo does not show a house there in 1969. So at that point in time we all know that the setback, side yard setback, was ten feet. So in 1969 there was no house there and no garage or shed or whatever it was in 1969. Sometime after that a house and if you look at the 1998 house location survey on January of 1998 by Aubrey Hawkins which shows the house and it calls out frame shed which is in the backyard. The backyard was fenced and this little frame shed is back there sitting 1.2 feet off the property line just like the foundation is today. So that, in my estimation, tells me, and the building permit doesn't bother me that we can't find the building permit. If the building permit was issued it should have been a ten foot side yard setback. Where the builder builds it that's his issue. If he builds it wrong that makes it a non... an illegal structure. It's not a nonconforming structure. It's an illegal structure, because he built it in the wrong place. He may have told him I'm going to build it ten feet off the line. He didn't maybe know where the property line is. And so that little framed shed that shows up on that plat in 1998, I call it a home grown shed, probably somebody went and poured some concrete and built a little frame shed. There's no driveway on that side of the lot in 1998. So it wasn't a garage. It was a shed, probably for a lawnmower. Then you go forward. The next piece of information we have, another plat. There was one done in 2006. I don't know who did it. The name is cut off the copy I have. And the one in 2006 again shows a frame shed that was there in 98. So in 2006 that shed was just a shed. It wasn't a garage, because, again, the driveway was not there. I assume this plat was submitted with Mr. Deegan to... maybe that was when he was going to upgrade the thing, and it looks like if you look at the plat it says proposed addition and proposed asphalt driveway. So, in 2006 or maybe the plat, maybe right after that is when he submitted for the building permit. He first thought he was going to add on to the house, because that's what he shows on his drawing and he was going to build that driveway, but somewhere along the line he changed his mind and said well I'm going to go back to that shed, frame shed, and make

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that a garage and extend the driveway from the road all the way back. So that's how it got to be a garage. It wasn't a garage in 2006. It was still a frame shed according to the plat. And then we come where we are today. This plat we have of 2008 which looks pretty much like the 2006 plat, except it shows that that new asphalt driveway has been built and it says a framed garage. That's the first time, in 2008, that shows up as a framed garage. So that's my story. If how we got where it is and then the tree comes and all that, and knocks it down. But still, and I go back to the very beginning and that is, the structure was built illegally inside of the setback line. We know that, because it was built at a time when the side yard was ten feet. And we also know... hey there are thousands of building, sheds and houses that are built by builders and homeowners who think they're building in the right spot and they're off and they're closer to the property line than the ordinance allows today and nobody has either caught it or said anything, but that doesn't make those structures nonconforming, it makes them an illegal structure until they come here. And we've seen a few of those cases when somebody finally says Well I want to add on to the house and they get a house location survey and they figure out whoa, my house is not in the right place to start with. It was built wrong. So, like I said, the building permit doesn't bother me a bit. Now, I have some thoughts about what you said on the County issuing a permit. If I can hang my hat on anything, that's the only thing, I may listen to you a little longer about. Not that I agree with you yet, but I would listen to you a little longer, but the rest of it, the building permit issue is a non-issue. We know the structure was built illegally in the side yard. Who did it? I don't know. When it was done? I don't know for sure, but we know that, I think that's a fact.

Mr. Leming: Well, based on the evidence that you have selected there, that's a logical conclusion. I suspect that probably what happened, I think it was a garage longer then you suggested. How that effects this case is not clear, but I suspect what happened is that this was in a development along Ingleside there, where there had already been homes built and where there were homes built prior to the change in the Zoning Ordinance in 1966.

Mr. Ingalls: Ingleside has been there a long time.

Mr. Leming: Right. And in fact, you have one letter of support that the Variance filed from the neighbor here and the neighbor also has an accessory building one foot from the property line. So my speculation is probably the same owner or the same builder built a number of these houses and wasn't aware of the change in the Zoning Ordinance and continued to build accessory buildings like this. Now, to conclude the garage didn't come into existence in 2006 though, requires that you completely ignore what Mr. Deegan has indicated here, that the garage was there at the time that he purchased the house.

Mr. Ingalls: I don't completely ignore it. He called it in his affidavit a garage. In 2006 we have a plat by a certified surveyor that says that is still a framed shed in 2006. Because that's I think in 2007, when in 2007 Mr. Deegan applied to have the... redo the garage or something...

Mr. Leming: 2006

Mr. Ingalls: Yeah okay, it was in 2006. He must have had this house location survey done, like I say it's dated January 30, 2006, to see what was going on, because he wanted to add on to the house on that end and he was proposing an addition and somewhere along the line he changes his mind and just said Oh, I'm not going to do that. I'm going to convert the frame shed into a garage.

Mr. Leming: Well the permit very clearly referred to a garage.

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Mr. Ingalls: Well, he was going to build a garage.

Mr. Leming: Well, I don't know whether he was going to build it or if he was going to improve it. Staff has taken the position that he was simply adding a door to the garage.

Mr. Ingalls: It's a framed shed with no driveway setting back there. I don't have to be a garage, if you don't have a driveway to it.

Mr. Leming: I think it comes down to which is the more credible document. The survey or the building permit that was issued by the County as to what the structure was.

Mr. Ingalls: Which building permit are you taking about?

Mr. Leming: But, aside from that, even in 2006... let's assume that it was garage for the first time in 2006. I don't think that's supported by the evidence, but let's assume that that was the case. There was still a building permit and a zoning review that was conducted in 2006 and a determination made that it could go on that location.

Mr. Ingalls: I told you. That part of your story I'm listening to. The rest of it... uh-uh.

Mr. Leming: Well, if we focus on that then the position of the applicant simply is that in 2006 is a zoning determination was made in conjunction with either the improvements to the garage or the new garage and they're valid by that determination. And that's clearly indicated on the permit here, that there was a zoning review that was conducted. So, and it was constructed and inspected and it was one foot from the property line. So that same argument that I made a few moments ago would apply whether or not we go back to the 1996 permit which Mr. Deegan says he obtained and there are simply no records at all at that point, or the 2006 permit which we do have documentation of. So...

Mr. Ingalls: I'm still listening.

Mr. Leming: Well, I mean, we've had cases like this before and we had this discussion on it.

Mr. Ingalls: Oh yeah. I know. Oh yeah.

Mr. Leming: And I think it's probably clearer to you than some of the newer BZA members that we do have State Law that says that when determinations or decisions are made with regard to the zoning ordinance that the County... the locality is bound by those decisions and that after 60 days they cannot be changed. That is the law. And even if the decision was in error, that continues to be law, at least in that particular context. Now if there was a malfeasants used in the obtaining of that decision that's a ground for change it, but even if the County was wrong, that's not a ground to change the particular decision that we made in 2006. So that is our position regardless of which documents or evidence you go with here.

Mr. Ingalls: Like I say, that... if you have case, that's your case. I think the one foot thing, I think is, being built legally, I don't think the evidence supports that in any way.

Mr. Leming: I think my position was that, even if... I don't have any basis to question that the Zoning Ordinance was changed in 1966 or 1968, there are minutes that indicate that. I don't know when the house was built.

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Mr. Ingalls: Well, but we know it was after 1969.

Mr. Leming: Well the reliance there is on an aerial photograph.

Mr. Ingalls: Well they photographed it. I see what I see.

Mr. Leming: But I think I was careful to say, even assuming all that to be the case. That we are talking about a house built maybe in the 1970s...

Mr. Ingalls: Could be.

Mr. Leming: ...that even if that's the case, that we still have the issue of the issuance of the building permit by the County and the zoning review that was conducted by the County at that time.

Mr. Ingalls: Obviously the house was built prior to 92, because that's when Mr. Deegan says he bought it.

Mr. Leming: Well the tax records go back, and I don't know... the tax records go back to 72.

Mr. Ingalls: 72? Okay.

Mr. Leming: Right. But there are no records before that. I mean, this is as far back as the... you know, they still have tax records. They don't have records before that.

Mr. Ingalls: Good news is, we have an aerial photograph that shows no house in 69, so it was probably built after... between 69 and 72. But it really doesn't make any difference when the house was built, because in that time period the setback was ten feet, if you say it was built sometime after 69.

Mr. Leming: Well and my response to what you have indicated is twofold. One, the sole evidence that there is when the house was built is the aerial photo. I don't know whether that's sufficient to make that determination, but even if it is, even if the house was built after 1966, which would be important thing. Even if that's the case, then we still have the situation of the building permit. Whatever that was issued for in 2006, where there was a zoning review that was conducted and either a garage was enhanced or improved that was one foot at that time from the property line or as you suggested, there was a brand new garage built.

Mr. Ingall: No, I think it was an old frame shed then. He tore it down and built a...

Mr. Leming: And so in 2006 we have it still one foot from the property line.

Mr. Ingall: I think that's correct.

Mr. Kim: I have a question. You said that there were other properties that had structures that are one foot from the actual property line?

Mr. Leming: Just the one next door.

Mr. Kim: Just the one next door?

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Mr. Leming: Right.

Mr. Kim: And they have...is it a shed or a garage or...what is it?

Mr. Leming: It's a garage.

Mr. Kim: It's a garage similar to this?

Mr. Ingalls: Is it brick.

Mrs. Cycan: Yes, a brick garage.

Mr. Kim: Okay, but that's one foot from the property line also?

Mr. Leming: Yes, uh-huh.

Mr. Kim: Thank you.

Mr. Leming: And that's what leads me to speculate that probably the same builder was involved and just kept building thing close to the property line. I mean it's an unusual distance. Think about where you would put something like this in your yard, because they have some significant constraints as you will be hearing in the next hearing, but putting something one foot from the property line is pretty unusual in this time but back then it appeared to be what was done.

Mr. Ingall: Well, didn't that house show up in the 69... that house shows up. That house shows up, it does show up there. The house and the garage I think show up in the 69... it's not a very good photo, but you can tell there is a structure there in 69.

Mr. Leming: In looking at that photograph I concluded that you could see that house.

Mr. Ingalls: Yes, yes. So that house, we know, was built prior to 69, which then that could have been a legal structure there.

Mr. Leming: If it was built before 66.

Mr. Ingall: Right. That is correct.

Mr. Leming: I mean after... yeah, before 66.

Mr. Ingalls: So that's very plausible.

Dr. Larson: Any other questions for Mr. Leming?

Mr. Ingalls: Can I ask... I mean, before we start deliberating up here... If we were to agree on some of these things and you're going to... to me, you have to build exactly, pretty close dimension wise and footage wise as to what was there. The building permit that I saw, talked about a two story, twenty-three foot garage with a big roof on top of it. You know, probably the top of the roof would be thirty-some feet in the air and the little garage that was there would have eight, maybe sixteen to eighteen feet.

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Mr. Leming: Mr. Harvey called me about that. The Cygan's came to me three days before the appeal was due so I'm aware that that was in the application originally. When they came in for their original building permit they assumed they were just coming in to get a building permit and that's all there was to it and that's all they would ever have to do. The storm knocked the garage down. They're going to come in and get a building permit. Rebuild it, so, all of this came out afterwards. They understand that the garage would have to be rebuilt as it was, that they're replacing a structure. I think they had some ideas about a little more...

Mr. Grimes: Second story storage is what it was listed at.

Mr. Leming: Well a different design of the roof, because the roof is a little strange if you look closely at it.

Mr. Ingalls: Well the roof is a hip roof.

Mrs. Cygan: Hip roof, that is it.

Mr. Leming: So I think they were thinking more of an A-frame.

Mr. Ingalls: Well the problem with doing an A-frame, if you are not careful... because of that other, and I guess I didn't... I looked at that garage over there and I said boy, that's pretty close too, the brick garage on the neighbor's. That one must be catty-cornered like this one is, because there's a sidewalk between the property line and his garage at the front of the garage. So I don't know whether the back of that garage was a foot off or not, but I know there was a little piece of sidewalk right there.

Mr. Leming: They understand that...

Mr. Ingall: I guess, if you're going to re... to me, rebuild it would be maybe you have to put a hip roof back on that thing if that's without increasing the height and everything else. Because the neighbor's letter says as long as it isn't built any bigger, any taller... it lists two, three things there. If you read his letter he says I agree with it, as long as it's the same size, same place, same height. You know, he didn't want it bigger, so if you don't do it like that, then his letter is not supporting.

Mr. Leming: I agree that there could not be any significant change to the garage.

Dr. Larson: So we're just building straight from the foundation, because the foundation is still there.

Mr. Leming: The foundation is still there.

Mr. Kim: So they're just going to go up from the foundation as is.

Mr. Leming: That's correct. As you'll hear the next application, there's really not a practical place anywhere else for it anyway, but yes that's exactly what we're ...

Mr. Ingall: Can I say one thing? In case we don't get to the next case. I think we got an opportunity to maybe... let's not build it exactly where it was, let's move it over some. You know, the foundation has got some cracks in it, I don't know what shape it's in. You'd have to add a little more foundation on the right hand side as you face it. Maybe make it square to the property line and move it so whatever the

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front corner is, is probably four or five feet off the property line. You could square it up and maybe you could build a square building. Now you have to build one that's got a funny corner on the back side there, which...

Mr. Leming: There might be an enhancement that would actually...

Mr. Ingall: Right. You could... if you would... like I say, if I was going to look at the variance I would say let's see if we can tweak it a little bit and make it... so they can maybe build a...

Mr. Leming: The main thing they're trying to do is get back to square one.

Mr. Ingall: Right and build a garage close to the spot where it is.

Mr. Leming: They want to build it where it is.

Mr. Kim: Even if they did straighten out, it doesn't seem like you still get the 10 feet, so I think it's irrelevant to...

Mr. Ingall: Like I said, we got to the variance, I would probably say they would need a variance, but...

Mr. Leming: That just works best for them. Thank you all.

Dr. Larson: Yes, do you have a question for staff?

Mr. Davis: I would like to ask Mr. Harvey, how do you feel about the zoning decision, or whatever it was in 2006 and what does that have to do with what we're doing here? Did you go out and inspect the property before you approved the zoning?

Mr. Harvey: Typically on a permit application the staff will look at the written request for the application. In this particular case in 2006 it says it was a nonconforming garage. Staff didn't do any other due diligence to see whether it was lawfully or illegal and issued the permit, because it was not expanding the extent of the garage. It was replacing the doors.

Dr. Larson: So the permit said that it was already nonconforming, is that...

Mr. Ingalls: He was going to build it then.

Mr. Harvey: From what I understand it was either referenced in the permit or there was a discussion with the applicant at the time that it was non-conforming.

Dr. Ackermann: And that would imply legal though.

Mr. Harvey: Well, there was no investigation at the time...

Dr. Ackermann: But there was a discussion of it, if zoning felt it was an illegal non-conforming, they would bring that issue up.

Mr. Harvey: Yes.

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Dr. Larson: I'm going to close the public hearing. Are there any other questions for staff?

Mr. Ingalls: Jeff... I'd like to ask Jeff... just to clarify. Do you agree or disagree with Mr. Leming's position that State Law says that if the County makes a decision, a zoning decision, which I'm assuming this is, that they have to live with it and that they can't at some point in time, after whatever the number of days it is, 60 or whatever, change their mind. Do you agree with that position?

Mr. Harvey: I do in the context of a Zoning Administrator's determination. In this case this was, from a staff prospective, an approval or a review as part of a building permit, which wasn't a determination what the zoning is and the specifics of the individual zoning aspects of the property. That's how the staff has viewed these types of situations.

Mr. Ingall: So your opinion would be, you did not do a zoning review of it per se.

Mr. Harvey: It was... the zoning review for the 2006 permit was, okay this is a residential zoning property, this is an accessory structure, they are putting doors on an accessory structure, which is normally something that's permitted. Again, staff didn't determine whether it was unlawful or lawful nonconforming at the time. We took for granted it was nonconforming and went about our business.

Mr. Ingall: Thank you.

Dr. Larson: If I look...

Mr. Poss: I have a question for Mr. Harvey.

Dr. Larson: So do I, go ahead.

Mr. Poss: With what you just said, would that indicate the \$55 on this permit? Would that be consistent with what would have happened at that time?

Mr. Harvey: That would have been consistent, yes, with the review that was done.

Mr. Poss: Okay, thank you.

Dr. Larson: So if you could... now another question... so could you clarify for me then in that time frame when it said zoning review, what would that mean? What would they be paying \$55 for?

Mr. Harvey: For a building permit associated with a garage, again looking at the zoning of that particular piece of property is, what are the setbacks, how is the structure configured on the property. In this case it was noted that there was a nonconforming structure that was already existent and again, whether the feature that was proposed to be added is consistent with what the zoning allows.

Dr. Larson: My other question was, when I'm looking at the picture that's... the new picture that's dated 3/11 I assume this year and I look at the 1969 picture. I look at references that... so I try to gage where the property lines are and if I look at the road with the bend at the top... can you see these pictures, do you have these things? I'm looking at the 1969 and the ones dated 3/11 which I guess is last year. Okay. When I look at the 69 picture, which obviously is a lot worse resolution, go figure, but along the road where it says Ingleside Drive, just under that, you see some, what looks to me like probably cement or

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asphalt or something, it looks like a driveway and maybe a sidewalk and then you see a structure to the south of that. If I looked at the most recent pictures I see, again, I see what looks like a driveway and an L-shaped sidewalk. It looks to me like the property line is in a different location. Are these drawings, the 1969 property line is that in the right place?

Mr. Harvey: These are aerial photos and we try to geo-reference as best possible, but as you can see from the 1969 photo, the Ingleside Drive right of way shifted south of its actual location, because you can see the concrete for the road is located outside of the right of way on that image. So these images are not a hundred percent accurate, because they are not an actual survey but they are typically plus or minus three feet for this type of mapping. In some parts of the County, especially older photos, the further you get away from the edge of the photo there is distortion, so the boundaries can also shift more depending on the location of the property in reference to the center of the picture.

Dr. Larson: So, I'm sorry, so are you saying the Ingleside Drive actually moved? Is that what you're saying?

Mr. Harvey: No, I'm saying that our property boundary is not accurate in that 1969 photo.

Dr. Larson: Okay, so if I look the new photo and assume that's correct and I look... and the property lines relative position to that long driveway which I think, looks to me, it has trees along it and there is some shade going on, so it's a little hard to see exactly where the driveway is. But if I look at that and I look at the 69 photo, looks to me like I would have to shift the property line to the right a bit and then I almost see a structure there in the picture.

Mr. Harvey: Yes.

Dr. Larson: But I don't know what that structure is.

Mr. Harvey: It looks like it's the neighbor's garage if I'm looking at the same point you're referring to.

Mr. Kim: Is that what you are looking at.

Mr. Harvey: I think still, even as you look at these photos, the images of the property lines were false.

Dr. Larson: This is what I'm referring to right here.

Mr. Harvey: This shadow.

Dr. Larson: Yes. It's really low resolution, but I think there's something.

Mrs. Keith: It is not consistent with what is on the ground I the most recent photo.

Dr. Larson: If we look at where the driveway ends here and where the driveway ends here, there's a house there. (Inaudible) their house, I don't know.

Mr. Harvey: Or it may have been under construction.

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Dr. Larson: But anyway that structure... if you moved the property line over that structure is just about where the garage would be, right?

Mr. Harvey: The garage is on this side.

Dr. Larson: Sorry. Let me take another look at that. So the garage is on the east side of the property?

Mr. Harvey: Yes.

Dr. Larson: I'm looking at the plats and it looks like... am I looking at this wrong?

Mr. Ingall: That's upside down to the photos.

Dr. Larson: Oh, I was looking for a compass rose and I don't... oh north is this way... oh. Okay. I didn't notice the compass rose on that plat was inverted to where everything else was being shown. Alright, I don't have any other questions. Any other questions for the staff?

Mr. Leming: Mr. Chairman, may I ask a question? Was I supposed to have a... I know there wasn't a public hearing. Is there a rebuttal period?

Dr. Larson: There were no public comments, so there wasn't really a lot to rebut.

Mr. Leming: I could still think of something else to say.

Dr. Larson: If you have something else to say, we'll allow it.

Mr. Leming: Okay. Actually what I want to do is to comment further on Virginia Code Section 2.3.1.1, because there has been discussion about that. I should have brought you a copy of it. The Code Section is very clear. It says any determination, decision, order, a litany of four different things, those are what are at stake here. This is not just a formal zoning determination. Historically what has happened in Stafford County is that in recent years, but not as far back as 2006, I think Mr. Harvey will verify, the County adopted a procedure. Where now if you want a zoning determination you have to make a formal application and pay a fee and even the adjacent property owners get notes, almost like a zoning. And while I question the legality of that, because the state law is so broad, if that was in place in 2006 when this zoning review occurred. My understanding of a zoning review, whether it be in the context of a building permit or anything else, is that you check the zoning of the property whether or not there are any ordinances that are an issue in what is being requested and in this case I think Mr. Harvey has indicated the setback or something that would be ordinarily checked there, but the language of state law is extremely broad and it is not nearly as narrow as Jeff is suggesting, or as may be the case today because of the new ordinance that the County has passed. But remember that was not in place in 2006. State law has not changed so that I put before you that we have a very broad statute that says any decision, order, determination, it doesn't have to be by the Zoning Administrator, it can be by an administrative officer. Once 60 days has come and gone, that's final and the only way, the only exceptions to that are malfeasants and misfeasants and that very issue has been before the BZA I think when at least four of you had been here. You may recall the Quarles Petroleum situation where it was exactly the same thing. They went in for a building permit. The zoning review was conducted and you all took the position that the County had to abide by that. So that I think is an accurate representation of what State Law is and the policy basis for it, I think is very clear. Once the governing body takes a position on something... and all

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of these things are not particularly clear cut, but once that happens then the property owners are entitled to rely on that. The County can't change, even if the original determination was a mistake. So that, I think, is what the law is that governs this particular situation. I don't think it's a matter of what their practice was. There was a... under this particular circumstance, there was a zoning review that was conducted. One of the specific issues that was looked at was setbacks and let him proceed on the accessory structure.

Dr. Larson: Thank you Mr. Leming. Discussion or... well, no. Any more questions?

Mr. Davis: We did have a case, as Mr. Leming mentioned, it was a determination of who exactly is an administrative officer.

Dr. Larson: Well. If there... there is a law on the books and I believe it's a just law, because citizens have a right to, you know, once they're given a reading by a government agency, then the government agency shouldn't willy-nilly change its mind. So, if there was no law on the books, there should be, there is and that's good. Yes.

Dr. Ackerman: I think there is points of interpretation and understanding about whether this approval of a permit is the zoning decision by an agency and I don't think this a willy-nilly change, because I don't believe it was error in the review or inappropriate review. That's my opinion and I think that's... I think it's open to opinion. That is what I want to say and we make a judgment on things and if it's not... and some people... agreeable to some folks, they're free to appeal it to the Circuit Court to get a, what I would think, would be a more informed opinion on it. I mean, I've been here and heard lots of cases, but I am not a lawyer and I can understand... my understanding of the law and I want to follow the law completely, but I think in this case and similar cases I think there's just finer points that are open to my interpretation.

Dr. Larson: I don't disagree with that.

Dr. Ackermann: But that, you know, that's no motions to approve or disapprove, but that's just my feeling about this issue that's come up a few times.

Mr. Kim: If I may say something?

Dr. Larson: Sure.

Mr. Kim: I mean, my understanding of this is that records from the past are just missing, because of the new ways we're storing our records and obviously when the Cycan's bought the property, it was good faith that... not to many people buy property and go oh, it's one foot from the property line and actually would know the codes that need to make it non-legal. So I'm a little perplexed on the whole... you know, if we follow the law the way it says, but then, as Mr. Leming said, it's been well past 60 days since that structure has been there and the structure is going to be as is. You're just building it back to what it was. It's not taller, it's not wider, and it's not longer.

Mrs. Cycan: The plans actually do show it as an A-frame, because our architect just said it looks more like our neighbors. This was a strange roof, like...

Mr. Cycan: It was a hip-roof...

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Mrs. Cygan: It was a hip-roof, I think because he built on, but our whole... we were told we have to stay on the footprint and that it totally... the plans that we paid for totally stay on the footprint and it definitely isn't 30 feet. I think its 23 feet and someone said, as long as you're staying on the structure you can change from hip-roof to an A-line roof which would be fine and that the concrete pad had... actually was assessed for no cracks. There wasn't any reason for us to have to do anything at the time and it has almost been a year.

Mr. Kim: Thank you.

Mrs. Cygan: Okay.

Dr. Ackermann: Mr. Kim, if I were to build a structure in my backyard that did not conform to the zoning code and I did not apply for a permit and then my neighbors complained and then I sold the property to somebody and they thought, well it's an okay structure they can change if they need to. It's still not a legal structure.

Mr. Kim: Oh absolutely, and if we had the records and that's where it goes back to Mr. Leming's point, if we had the actual records of when the permits were submitted and we can see, you know, how it's permitted and, you know, if that was the original structure when the house was built, then yeah, I mean... and if it wasn't there then all of a sudden it was there without a permit, then I would absolutely agree. But without having those records I just... I mean it's very, I mean I can't imagine a builder who will decide he's just going to build something just to build it, because I'm sure there's some ramifications on his permit if he decides to do that or his licensing if he decides to do that. And like if it was, if we had a clear cut documentation of this is when the permit was, this is when the house was built, this is when the permits were submitted, then I think we would have a clear view, but I think the Cygan's, in my opinion, you know, once again, had good faith that the house was up to Code and you know, the only unfortunate reason why we're here is because a tree fell on your garage. And that's my only issue. If we had records before then, of when it was built and when the permits were actually submitted, then I think that this would be a much easier case.

Dr. Ackermann: Oh yeah, this is definitely not an easy case.

Mr. Kim: No.

Dr. Ackermann: And it's...

Mr. Grimes: And I agree. They bought it with the shed... sorry... the garage. And the reason I'm calling at a shed, because in 1998 that's what it was. We don't know how it got there, we don't know when it was permitted, but it was there. I have a feeling. I can't proof it obviously without documentation, but it wasn't there in 1969. It's here in 1998 and it's called a shed. Even on the next generation of the plat it's still called a shed. I imagine that it was a backyard structure built, kind of like putting down a concrete patio and the next thing you know, it's a sunroom. I feel like that's what's happened, because even in the modification permit request that Mr. Deegan made, he notes that he's putting in two garage doors that weren't there before. He's filling in the corner, adding windows, putting in power. This is just a structure that's kind of been built over time. I know we can't prove that it never had a permit, but you can if it was never applied for. The photos are the only thing we can go by and again, I think it was a shed. It's become a garage over time and nobody's ever looked at the zoning issue.

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Mr. Kim: May I ask the staff one more question?

Dr. Larson: Sure.

Mr. Kim: Now in your opinions, was it a shed that someone just decided to... just coming up with a year, in 1984 decided, hey let's make this into a garage and didn't apply for a permit or is it because... I mean is there any chance of that?

Mr. Harvey: Well you can see in 2006 it was referenced as a garage in the permit and no one went out to verify it was a garage or a shed or anything but a garage.

Mr. Kim: So we can only go off what that... okay, great.

Dr. Larson: Do we have any idea when the house was actually built. What year it was actually built?

Mr. Grimes: It appears from the permits that the 2001 permit was an expansion to an existing home that was on the lot.

Dr. Larson: Right. So the original house, do we have any idea when that was built?

Mr. Harvey: Dr. Larson, the Commissioner of Revenue records have estimated year built of 1974.

Dr. Larson: Okay, so that's still after 66 and, I mean, if you look at the 69 photo and now that I understand the orientation of the plat, I really don't see anything over where the shed or garage was going to be. I might be missing it, but I don't see it.

Mr. Davis: At what point did the Commissioner of Revenue start taxing the garage?

Ms. Keith: Did you say 1972?

Mr. Leming: The tax records simply show that there were charges of course for the land and there were charges for the improvements. Beyond that there is no strict... here we go. Umm, what we have is a value of the land and the timber and the value of the buildings and improvements. And what we see is, as Jeff indicated, the first value is assigned to this in 1974. There is a value for the land prior to that point in time in 1972. What we know is that there are no tax records prior to 1972. What we have then are substantial jumps in the value of the buildings and improvements between 74 and 79 and again to 83. Now some of this may be inflation, just the assessments going up. Then we have a jump from 83 to 88 of almost 25 per cent. There is another jump after the pool house apparently was constructed, this was in 97. Not an insignificant jump at that point in time. So it's really hard to tell what's causing the jumps and whether or not there were other things. There is not reference on the tax records to the specific buildings that are on the property.

Dr. Larson: Mr. Harvey, in the building permit dated September 2006 where it has the zoning fee, the assumption was made that it was a nonconforming structure at that time. Where did that information come from? Do you have any clue as to where... whoever did this determination got the information for the nonconforming structure?

Mr. Harvey: It was, because it was an existing structure and was not meeting setbacks.

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Dr. Larson: Okay, so the existing structure was not meeting setbacks so it was assumed that it was nonconforming. Which may not be true, it may have been built after the law changed.

Mr. Harvey: Yes and there was not further investigations to whether it was an illegal structure or a lawful structure.

Dr. Larson: Were there... okay and then... so I guess there were additions to the garage then at this point in 06? Square footage added, electricity addition. These are all referring to the garage, is that right?

Ms. Keith: Umm... it is... what happened... they initially wanted to add square footage, but they was not allowed, because of it being an...

Dr. Larson: Nonconforming?

Ms. Keith: Nonconforming. So they took off square footage... 12 square feet and squared off another area in order not to increase the nonconforming structure.

Dr. Larson: So the assumption was it was nonconforming and everybody treated it that way?

Ms. Keith: Yes.

Mr. Kim: And they changed... they altered the plans too... but there was no inspection made. Is that what I'm getting?

Ms. Keith: That's correct. We... zoning does not do zoning inspections. We just rely on, once the plats are submitted that the good faith of the applicant... they're going to build accordingly.

Mr. Leming: There is a letter that you have that was submitted, it appears, by either a third party inspector or the contractor after the work was done confirming the completion. I think that's the third page.

Dr. Larson: So it seems to me, the first fundamental question we have to decide upon for ourselves and for record I suppose is... we all know that... or we all highly suspect that there was no structure there to be nonconforming, but the County and the new owner of, I guess it was the new owner, assumed that it was nonconforming and the went... they made decisions and invested money based on that. So the question is. What is the question? It's not really nonconforming if the structure was never there to begin with, meaning, when the law would have made it conforming. When the law was in place that would have made the building conforming. The structure does not appear to have been there at that time. It appears to have been added later and then I guess ownership changes, people just assumed it was nonconforming.

Mr. Leming: Four owners over the change of title.

Dr. Larson: Well, is there a motion on this question? Are there any other questions that we need to ask before there's a motion on this question? Does anybody want to make a motion on this question?

Mr. Kim: Motion to be approved.

Dr. Larson: Okay, this an appeal to a failed zoning review. So what is your motion?

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Mr. Kim: To... it's an appeal, so I guess, to vote on the appeal, right?

Dr. Larson: Vote to...

Mr. Ingalls: Overturn.

Dr. Larson: Overturn the decision of the zoning review.

Mr. Kim: Yes.

Dr. Larson: I think that's what you're saying.

Mr. Kim: That's what I'm trying to say.

Mr. Ingalls: I'll second that.

Dr. Larson: Okay. There has been a motion in case number A13-02/1300139 to overturn the zoning review. In that case the motion has been made and seconded. Any more discussion?

Mr. Ingalls: Mr. Chairman.

Dr. Larson: Sir?

Mr. Ingalls: I'm inclined to vote for the motion, even though my heart doesn't really want to, but the only thing that I can... the reason I'm considering voting for the motion is, I'm going to assume that the state law is correct and that if the County makes a determination and then wants to later resend it...you know, on page six of the thirty two pages we had, which is for the... I think is a 2006 building permit, one of the comments, if you read down in that page, it says 9/11/06 spoke to applicant regarding nonconforming structure. Applicant stated garage already exist only square off by 12 square feet. And then the next comment was four days later on 9/15/06 applicant revised plans to remove twelve square feet from another corner to not increase a nonconforming structure which tells me that at that point in time somebody determined that that was a nonconforming structure, because he talked to the applicant about it. Because what he wants to do... if you go back to the original shed... the original shed had two square corners and two catty corners. If you go back and look at the original drawings that we have, the back... if you face it...if you're looking at it from the front, from the garage door, the back left corner is an angle cut off and the front right corner was also angled off. So this shed had this funny shape to it. Why you would ever build it that way? Who knows? And then part of this application is, he squared up the corner on the right... front right. If you go look at the slab you can see where he added a triangular piece to square it up in the foundation there that's on the slab. You can see that he added that so he could square up the front of the shed, but he took off on the back. I think he moved the wall in some distance, a little bit of distance to make up the twelve square feet that he was enclosing in the front. So at that... in 2011... that comment, 9 whatever it is, 9/11/06 says that regarding nonconforming structure. So somebody at the County, and I believe incorrectly, I also agree that I think incorrectly it was a non... it was not a nonconforming structure, it was an illegal structure. And that's why I'm leaning towards supporting the motion to overturn. But like I said, I really would like to clear it up a little more with the variance, but that's maybe not what I get to do.

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Mr. Grimes: My head says no, my heart says yes. I mean, somewhere along the line somebody's built this, and gone through the process, added on to it, modified it through the permit process, the zoning people look at it, you bought it that way. So my heart is saying yes. I also agree that maybe the avenue is the variance, but ultimately I'm going to end up with the same decision in my mind, is that it can go forward and be rebuilt. So I don't know if the right way to handle it is approving the appeal, because then it reflects, in my opinion, on the County that they did something that was inappropriate. So I'm struggling with this and I know the variance is here. I know it's behind this. So, I mean, that's my struggle.

Mr. Davis: Would you want to modify the motion?

Mr. Kim: To...

Mr. Grimes: I mean if I...if we took this as a whole, both cases, and I would modify that we would grant the variance to allow the structure to be rebuilt with the existing nonconformance. Not approve the appeal. Because I don't think the County has done anything wrong. I think their approach and logically from reading all the documentation, I think it wasn't built appropriately. I won't call it illegal, but I don't think it was ever properly reviewed or ever properly permitted and so what the County did is per the letter of the law and their requirements. So, yes, I would put that through and just come into the second case and so I would say no to the first and then maybe yes to the second.

Dr. Ackermann: I agree with you, that I think the County did act appropriately and certainly acted in good faith on all this. I think if you look at the case that Mr. Ingalls made about this being a shed and then being turned into a garage, it's... I still think it's something that just kind of snuck through. But that's just my thoughts on it, so... and... even though it's difficult to do what your head says and not what your heart says, I think we're here to do what are heads say, because we are officers of the Court. So I'm not inclined to vote in favor of the motion.

Mr. Kim: I simply would... am in favor of the motion, because we don't have any records because of the change in our record keeping in 97. If we had a little more backbone to... and I go to that and I don't know why I'm harping on it because, you know the Cygan's... what you guys bought the property in 08?

Mr. Cygan: 08.

Mr. Kim: 08, and I mean it was an existing... tree fell on it. It got destroyed and they just want to put it back to the way it was and at this point my heart and my head says to... and I don't think it's anything that you guys, that the Planning Board did that was wrong or that the County did wrong. I just kind of... circumstances... circumstances stand where we don't have the records and we... pretty much all of this is on good faith I think. I mean they didn't buy... I mean the Cygan's didn't buy the property thinking that, you know, this was an illegal, you know, shed, garage, whatever you want to call it. I mean I'm sure they... and that's where I stand is just going back to the records.

Dr. Ackermann: So, I'm more inclined to go with the variance approach, because of, I think if we approve the appeal overturn on the judgment of the zoning department. I believe a lot of this is based on us accepting, right or wrongly, Mr. Leming's interpretation of the state law that this was determination by the County and so it stands forever. So... but I don't agree with that and so that's why I wouldn't vote for this motion. I would rather address it through a variance if that's how we want to address the rebuilding of the shed.

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Dr. Larson: Well.

Dr. Ackermann: That's how I feel.

Dr. Larson: There is always the option to abstain and if four votes don't get cast the motion won't carry. Or you could vote no. I think that all sides here have acted in good faith. The County's done their job the way they should do their job. The owners bought the house with an understanding and never had an inkling that their understanding might be erroneous until a tree fell on their garage. So I think probably the variance approach is probably the more reasonable way to go too. The reason why I wanted to consider them separately is the variance is permanent it rides with the land. This is only... this whole discussion is a temporary thing. As you know by the definition nonconforming how you can fix that eventually. So to me the two discussions are slightly different.

Dr. Ackermann: Call for the question? Can we vote on it?

Dr. Larson: Yep, any other comments or discussion on the question? The motion is to overturn the Zoning Administrator's, I guess, decision to not allow the construction. Those in favor say aye.

Mr. Kim: Aye.

Mr. Ingalls: Aye.

Mr. Poss: Aye.

Dr. Larson: Those opposed.

Mr. Ackermann: Nay.

Mr. Davis: Nay.

Mr. Grimes: Nay.

Dr. Larson: One, two, three, four, five.

Mr. Poss: To vote to overturn it.

Dr. Larson: I'm sorry. Let me call for the question again. Those in favor of overturning the Zoning Administrators decision, raise your hand. One, two, three. Those opposed? Four. Alright, the motion is defeated which means the Zoning Administrator's decision is not overturned. Let's consider the next question. The application for variance.

2. **V13-01/1300152 – Leming & Healy, P.C. for Alan & Kerrie Cygan** - Requests a Variance from Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", R-1, Suburban Residential, of the side yard requirement to construct a detached garage on assessor's parcel 53-9D. The property is located at 312 Ingleside Drive, lot 6, Ingleside subdivision.

Mr. Kim: Do we have to read the... this could be really short.

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Dr. Larson: Yeah, I think we know the case so how about if we do... can we... is there anything that needs to be added to the case that we don't know from staff's perspective?

Mrs. Keith: No, there isn't. No, I mean I can read the case, but...

Dr. Larson: I think we know the case.

Mr. Leming: I will just volunteer to not say anything.

Dr. Larson: Well Mr. Leming, is there anything that you need to add for...

Mr. Leming: I think, since we have a record here if you want to, you have criteria for your variances. I think we meet all of those criteria. Therefore I'm sure your familiar with strict application of the provisions of the chapter would produce undue hardship. In this particular case we have an unusual... I think staff essentially agrees with our position here. The property is limited by a combination steep slopes, lot narrowness, resource protection area, plus we have a cement pad on the ground that's already there. And under the circumstances here it is not an issue of their creation. A tree fell on the garage. They're obviously hoping not to incur any additional, any additional expense from what's necessary to reconstruct the garage that they had. The hardship is not generally the second criteria and the hardship was not shared by the properties in the same zoning district, in the same vicinity. That's an interesting question, because we both said that there are a few other parcels that share this hardship. I'm not sure if it's the hardship. I think it's the setback issue that some other properties share. I don't think anybody else has an accessory building that needs to be replaced, so...

Dr. Larson: Well they may also be nonconforming.

Mr. Leming: That's true, but I'm not sure nonconformity is the hardship. I mean the hardship...

Dr. Larson: Well yeah that's... but they may not have the issue.

Mr. Leming: Right. So there's nobody else that we know of that needs to rebuild an accessory building one foot from the property line. Looking at it as narrowly as possible. Number three, the authorization of such variance shall not be of a substantial detriment to the adjacent property. The character of the district will not be changed by the granting of the variance. We have a letter from the adjacent property owner that they are not objecting to a garage that is essentially the same garage that it was there previously and of course she has her own garage one foot from the property line. Character of the neighborhood, this garage was there for a substantial period of time. We won't get back into when the garage was actually built, but it had been there for a while so they're not changing anything. They're simply restoring something to its condition pre last summer. And fourthly, that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation or change to the zoning ordinance. I don't think anybody's taking the position here that the kind of hardship that they've encountered with the storm smashing their garage is something that you all should go to the Board of Supervisors, and make a recommendation about, with regard to an ordinance change that would take care of this kind of thing if future cases like this would come up. So I don't think it fits that. So in our review of course we think we meet all of the criteria. So I'll stop talking and just think if we reverse the order of these things, where would we all be now?

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Mr. Ingalls: Can I ask a question.

Dr. Larson: Of course.

Mr. Leming: Yes Sir.

Mr. Ingalls: Mr. Leming, I guess you're asking for an 8.4 foot variance, which means the garage could be 1.6 feet off the property line.

Mr. Leming: Is that the distance? I thought it was 1....

Mr. Cygan: It is 1.1.

Mr. Leming: 1.1.

Mr. Ingalls: It says 8.4.

Mr. Leming: Well I think we need a little more than 8.4 to meet that setback.

Mr. Ingalls: So what do you need?

Mr. Leming: So according to survey it is 1.1 foot off the property line so we need 8.9.

Mr. Ingalls: So really are asking for a 9 foot.

Mr. Leming: That's correct.

Mr. Ingalls: Now, just a little... we all know what we're talking about here, except, ten years from now or three years from now, when I'm not going to be here, nobody's going to remember what we really said. Because really what we're talking about is only one corner of it can be that close and the other corner can't be... has to be some other distance. So we're not giving a... everybody's got to understand, we're not... so you can't square it up to the property line.

Mr. Leming: All you're doing is ratifying the existing pad site.

Mr. Ingalls: But I want to make sure everybody understands what we are saying. And like I say, years later somebody is going to go back and revisit this case.

Dr. Larson: Yeah, so the variance would in the essence be making the nonconforming status of the footprint of the garage legal. And that's essentially what you're suggesting.

Mr. Leming: In terms of the footprint, do we know how far the other side of the garage is from the property line?

Dr. Larson: No, we do not.

Mrs. Cygan: It is ten feet.

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Mr. Leming: So I mean that's... that may be the best way to say it, because we don't have a measurement other than the one 1.1.

Mr. Ingalls: Yeah, we can certainly maybe say, well the southwest or whatever that was.

Mr. Leming: Or you could reference the plat.

Mr. Ingalls: You know, the southwest corner can be, on the left hand side, can be 8.9 variance and the other side can be no closer than the existing concrete slab, or something of that nature.

Mr. Leming: Or reference the footprint of the garage in the 2008 plat, because that shows almost exactly where it is.

Mr. Ingalls: It shows, but it doesn't... like I say, just a detail.

Mr. Leming: So is that sufficient?

Mr. Ingalls: You know my wife says I only use... engineers only use half the brain, I'm not into that (inaudible). It's either left or right. One and one is always two. It's not two and a half or two and a quarter. That's why I ask you, if we give you the 8.4 then you come back and see me.

Mr. Leming: Then I would have to come back and see you again. I appreciate your noticing that.

Dr. Larson: Any other questions for Mr. Leming? Alright, oh did you have a question?

Dr. Ackermann: I don't have a question. I have some statements.

Dr. Larson: Okay. Nobody from the public is here so, are there any questions for the staff while the public hearing for this is open, so we can get some responses if we need. We can do that anyway, I suppose. Okay I'll close the public hearing and bring it back to the Board. We've heard most of the details. Does anybody want to make a few comments or...

Mr. Davis: Do we have a motion on the floor?

Dr. Larson: Do we want to make a motion? Any questions for the staff? Is there a motion?

Mr. Grimes: I would move to approve the variance based on their request, but I think we need to define it a little better. I agree that the 8.9, I guess we've revised it, is the requested variance, but it needs to be defined by the location of the existing pad. And then I... I should have made a comment before I made that motion. Never mind.

Dr. Larson: What's your comment?

Mr. Grimes: Well I'm just curious if the owners would be willing to make some compromise in the location of this to lessen the request of the variance. I mean, right now there's nothing there. There's a pad. Adding, oh I don't know, three, four feet to the pad, moving a little bit inward to the property. I don't know. Is there...

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Dr. Larson: That is an interesting question. Could the applicant consider a smaller structure? There's a pad. They were going to rebuild on the pad. Is that the minimum structure that's needed for their uses?

Mr. Leming: I think the structure is pretty small as it was.

Dr. Larson: What are the dimensions?

Mrs. Cychan: 16 by 25.

Mr. Grimes: 25 is the width as it approaches the double garage doors. Because you've got two garage doors that are pretty standard size, about a foot separation. And then it appears that it was pretty symmetrical left to right and what I call the returns, maybe two to three feet on each side. Enough to open the car door right? So that would make the 25 feet that I see. And I'm not saying a smaller structure. I'm simply saying, move it to the west, three, four feet, because the cost of the structure is going to be the cost of the structure. If you rebuild a 16 by 25 it's the same cost. The only added burden on the owner would be the cost of the pad.

Mr. Leming: Well it's really not, because the insurance company pays to replace it. The insurance company won't pay to move it, so that falls on them.

Mr. Grimes: Understand.

Mr. Leming: There is a retaining wall, how far to the backside?

Mr. Grimes: Yes, in the pictures it looks like the property kind of falls off on the back. It's relatively level to the west.

Mr. Leming: The only really thing to do is to rebuild it in its existing location.

Mr. Grimes: Plus you probably hit that big, beautiful... well, the tree is, what caused the problem. I thought it was a tree from the other side. It was your tree?

Mr. Leming: Yes, their tree.

Mr. Davis: The attachment 4 shows the new garage at 26'4" by 25'.

Mr. Ingalls: I have the same feeling as my colleague does. I would hope that the applicant would look at this and say you know what? I don't want to build this funny garage again. Let me build a real garage and shift it two or three feet. It would solve your problem and it's not that... you know, looking at it the top on the right hand side is not that bad. Looks like maybe you've started... somebody's got a retaining wall started back there with no dirt between it yet. Put the retaining wall back there and that may have come from where the tree was, but anyway, it's back there. It's easy to fill again and... like I said, go back and build this thing on this funny shape, with this hip-roof that you don't like and, you know, it would be worth looking at and saying, you know what, I'd rather have a little bigger... maybe we could give you a bigger garage. You know, a little wider.

Mr. Kim: But that's not what the insurance is going to pay for.

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Mr. Leming: If they were starting from scratch then we would have to look at that. Even if we were in a scenario where they knew from the offset when the tree fell over that they were going to have to come through this process and already accomplished that and did that first thing. But the scenario has been different than that as you know. The tree falls over. They worked the deal out with the insurance company. Had plans done first thinking all they're going to do is have to come in and get a building permit. They do that. They can't get that. We're now some four month after that fact and their still trying to get their garage built. They really don't want to get into additional engineering, additional construction. The insurance company has approved the package that permits them to build a garage. They have to build the exact same garage, I think even that's their preference to doing some different at this point in time. They just want to get this back to normal and have their garage back.

Mr. Ingalls: I just think there's an opportunity here that maybe... just because the slab is there is the only reason they want to put it there. There's room on that lot to build a garage and come closer to meeting the setbacks, the side yard setback.

Dr. Larson: Robert, would you restate your motion?

Mr. Grimes: Yes, my original motion is to approve the variance for the 8.9 feet. As long as the owner maintains the construction on the existing pad.

Dr. Larson: Okay. So you moved to approve the variance, basically using the existing pad. In other words, just making this thing... if it were a nonconforming issue, you would be making it conforming.

Mr. Grimes: Yes.

Dr. Larson: I mean, we're making the current footprint legal?

Mr. Grimes: Yes.

Dr. Larson: Is there a second?

Mr. Kim: Second that.

Dr. Larson: Any other discussion?

Dr. Ackermann: I just wonder if that's tight enough language for that. So we want to approve variance of that garage built on the existing pad, to allow a garage to be built on the existing pad. So the variance is 8.9 feet in one direction and it's probably 4 feet in another direction and that's not... just saying, if we don't allow the 8.9 feet next to the property line because then you could build, if you wanted to somebody could go straight out or as Mr. Ingalls said, five years, you know, you've got the 8.9 feet so...

Mr. Grimes: I could revise the language to simply state that the, I guess the maximum... how would I put that? Put something in there to describe that the closest point can be that variance of 8.9. Or in this case, the closest point ever could be 1.1, right? The maximum granted variance could be 8.9.

Mr. Kim: Could we make a motion to word it better?

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Mr. Grimes: The problem is that means they could literally turn the whole thing. I mean, they're not going to.

Mr. Kim: But can we just word it better to, you know, state that, I mean I'm sure one area is four feet, you know, the other is five and I'm not sure exactly... but the closest point to, from what I can see, the closest point to that garage is, you know, 1.1 foot to the setback. So, how about...

Mr. Grimes: Or define it as that corner.

Mr. Kim: Yeah, that corner. You know, 1.1 and then it's the closest you're going to get from that corner and then you can straighten it out and... does that make everyone happy... I mean I don't know if that...

Mr. Leming: That's fine but you also have plat that has a scale on it. It shows the exact footprint.

Mr. Kim: Yes, but it is kind of hard...

Mr. Leming: You just reference to the date of the plat and attach it to your records.

Mr. Kim: Yeah, I would say, just as is you can't straighten it out so the whole section is 1.1 foot closer. Which you're not going to do, because you already said, the insurance isn't going to pay to move anything, so...

Mr. Ingalls: But it could happen in the future.

Mr. Kim: It could happen in the future. So is there a way we can just say this is it? It would be kind of hard to say, you know, at ten feet from the front to back its four foot allowed and six foot, yeah.

Mr. Grimes: Referencing the plat in the variance.

Dr. Larson: Does that say the footprint of the garage as shown on this plat? Yeah, I'd prefer it tightened up too.

Mr. Grimes: So would modify my motion to approve the variance, including the language that the variance be granted based on the garage being built in the same place as shown on the plat dated July 7, 2008 as prepared by Aubrey Hawkins, plan surveyor and I'd attach it to the variance.

Mr. Kim: I second that.

Dr. Larson: Any other discussion?

Mr. Ingalls: Mr. Chairman, I'm inclined to oppose the motion, because I really believe there's an opportunity that it could be moved over and made further from the property line by at least two or three feet and maybe as much as four feet, five feet from the property line.

Dr. Larson: You actually got an opportunity to visit the property. Unfortunately I've been on travel since we got our package until about three hours ago. So I didn't get a look at the property and I'm questioning whether this satisfies the hardship clause. On the other hand I'm inclined to favor the motion, because I feel like the hardship is a little... it's not associated with the property per se, but the County and... there

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have been mistakes made in the past and based on maybe misrepresentations or whatever, but there are some good faith decisions made on the assumption that it was nonconforming in the first place and... so I'm inclined to favor the application. Any other comments?

Mr. Davis: I agree with what you mentioned. It's difficult making the determination that it was a hardship, because now the questions are answered. We have a form we ask people to fill it out, complete it. It makes it a lot easier to make these determinations if we have all the information. And maybe in the summary they can ask for it to be in the application. I am supporting the variance.

Dr. Larson: Other comments? Okay, those in favor of the motion say aye.

Mr. Kim: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Mr. Grimes: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Ingalls: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Two opposed?

Mr. Leming: Thank you all very much. I enjoyed spending the last two hours with you.

UNFINISHED BUSINESS:

Dr. Larson: Alright, let's see. We have no unfinished business that I am aware of. We do have the by-laws under other business and we've all seen the by-laws and reviewed them. You may have had another chance to take another look at them. I there any further discussion on the by-laws as they stand?

OTHER BUSINESS

1. Draft By-laws

Dr. Ackermann: It's the items in yellow that are the changes?

Dr. Larson: Yes, that's to highlight the changes and the comment obviously would be removed.

Mr. Kim: We have read these already.

Dr. Larson: Yes, nothing has changed since the last time we sent it around. Okay, hearing no questions, is there a motion to approve the by-laws?

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Mr. Davis: So moved.

Dr. Larson: Is there a second?

Dr. Ackermann: Second.

Dr. Larson: Those in favor say aye.

Mr. Kim: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye. Any opposed? Okay, that motion passes.

ADOPTION OF MINUTES

2. Not Complete

Dr. Larson: We don't have the minutes to adopt yet, because they're still having an issue with getting help to generate the minutes. Melody is overtasked, so that's not going to happen tonight. Okay, Zoning Administrator Report?

ZONING ADMINISTRATOR REPORT

Ms. Keith: There is nothing to report at this time.

ADJOURNMENT

Dr. Larson: Okay I am going to adjourn the meeting.

With no further business to discuss, the meeting was adjourned at 9:00 p.m.